



2014-098

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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Honorable Tony Petelos
County Manager
Jefferson County Commission
716 Richard Arrington Boulevard North
Birmingham, Alabama 35203

Motor Vehicle Tags – Fees – Commissions
– Audit – Municipalities – Jefferson
County

A city is authorized to retain within its coffers the amount of the issuance fee levied by its city council. A municipal license plate issuing official is required to remit all other taxes and fees in the same manner as the county license plate issuing official.

If a city retains fees and commissions that are required by general law to be allocated to the county, an audit conducted by the Alabama Department of Examiners of Public Accounts would determine any shortages. Section 2(a) of Act 2012-196, as amended by Act 2014-007, states that the city is responsible for any shortages as determined by an audit.

Dear Mr. Petelos:

This opinion of the Attorney General is issued in response to your request on behalf of the Jefferson County Commission.

QUESTIONS

What fees, commissions, and other amounts is a city authorized to collect and retain in return for providing the services in Act 2014-007?

If the city has retained those fees and commissions required by general law to be allocated to the county, can the county require the city to remit such fees and commissions to the county?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that Act 2014-007 authorizes municipalities in Jefferson County to provide motor vehicle tag renewal services to residents. Recently, the county commission received two checks from a city in connection with Act 2014-007. The city, however, failed to specify or itemize the deductions that were retained by the city from the gross amount of taxes and fees collected. Previously, this city had communicated to the county that the city was anticipating retaining for itself those fees and commissions that are required to be paid to the county pursuant to the general laws of the state. Accordingly, you question what amounts a city is authorized to collect and retain pursuant to Act 2014-007.

The provisions of Act 2014-007 state, in pertinent part, as follows:

“Section 2. (a) In Jefferson County, the mayor of any city in the county may designate a city officer or employee to issue motor vehicle registrations. . . . The city license plate issuing official, or his or her agents or employees, shall collect the registration fees, ad valorem taxes, and issuance fees on the vehicle and remit the fees and taxes less any issuance fee and commissions retained by the city, in the same manner as the county license plate issuing official. The commissions for assessments and collections of taxes on motor vehicles for the General Fund of the state and county shall be calculated at a rate of 1 percent for assessments and 1 percent for collections.

(b) The city council of a city that issues motor vehicle registrations pursuant to this section may levy an annual additional issuance fee, not to exceed five dollars (\$5), for each motor vehicle plate issued by the city license plate issuing official. The annual additional fee authorized by this section shall become due at the same time the state registration fee becomes due. The annual additional fee shall not be collected more than once per vehicle during a registration year. The local issuance fee collected pursuant to this

subsection shall be deposited into the general fund of the city levying the fee and shall be used for the operation of the city license plate issuing official's office."

2012 Ala. Acts No. 2012-196, as amended by 2014 Ala. Acts No. 2014-007.

Section 2 of Act 2012-196, as amended by Act 2014-007, requires a city license plate issuing official to remit the taxes and fees in the same manner as the county license plate issuing official. Based on the plain language of the act, a city licensing official merely acts as an agent of Jefferson County with respect to the assessment and collection of taxes on motor vehicles.

Your inquiry also contemplates the specific authority of a municipality to retain a portion of the taxes, fees, and commissions collected. Section 2 states that a "city license plate issuing official shall collect the registration fees, ad valorem taxes, and issuance fees on the vehicle and remit the fees and taxes less any issuance fee and commissions retained by the city . . ." 2012 Ala. Acts No. 2012-196, as amended by 2014 Ala. Acts No. 2014-007. Section 2(b) of the act authorizes a city that issues motor vehicle registrations to levy an annual issuance fee in an amount not to exceed five dollars. This issuance fee is to be deposited into the general fund of the city levying the fee. No other provision within Act 2014-007 authorizes a municipality to retain an amount collected and deposit the same into the general fund of a city.

In your request, you referenced your understanding that a city may be authorized to retain the 2 percent commission on state and county general fund ad valorem taxes for assessment and collection. This Office reads that provision within the act to be instructional with respect to where or how a city licensing official should credit the commissions for assessments and collections. If the Legislature had intended to authorize a city to retain any portion of the two percent commission, the Legislature would have stated that such moneys would be deposited into the general fund of the city. As such, this provision is further evidence that the Legislature intended for city license plate issuing officials to be facilitators or agents of the county with respect to the issuance of motor vehicle registrations. Thus, a city must remit all fees and taxes in the same manner as the county license plate issuing official, but may retain the amount of the issuance fee authorized by municipal ordinance.

Lastly, you question whether the county may require a city to return to the county any fees and commissions that were retained by the city, but in excess of what was permitted by Act 2014-007. Act 2014-007 states that a city is responsible for any shortages as determined by an audit by the Alabama Department of Examiners of Public Accounts. 2012 Ala. Acts No. 2012-196, § 2(a), as amended by 2014 Ala. Acts No. 2014-007, § 1. Although there is a

Honorable Tony Petelos
Page 4

manner of redress should a city retain funds in excess of the issuance fee, it is the opinion of this Office that the county and participating cities should amicably work together to supply residents with license plates.

Your inquiry also notes possible constitutional questions surrounding this act. This Office does not make determinations regarding the constitutionality of an act. Instead, an act is presumed to be valid and constitutional unless determined otherwise by a court of competent jurisdiction. *See, generally,* opinion to Honorable S.B. "Albert" Hutchins, Mayor, Town of Woodstock, dated October 30, 2001, A.G. No. 2002-042.

CONCLUSION

A city is authorized to retain within its coffers the amount of the issuance fee levied by its city council. A municipal license plate issuing official is required to remit all other taxes and fees in the same manner as the county license plate issuing official.

If a city retains fees and commissions that are required by general law to be allocated to the county, an audit conducted by the Alabama Department of Examiners of Public Account would determine any shortages. Section 2(a) of Act 2012-196, as amended by Act 2014-007, states that the city is responsible for any shortages as determined by an audit.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH

Chief, Opinions Division

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